

Letter of Findings: 04-20130661
Gross Retail Tax
For the Years 2010, 2011, and 2012

NOTICE: [IC 6-8.1-3-3.5](#) and [IC 4-22-7-7](#) requires the publication of this document in the Indiana Register. The document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Gross Retail Tax – Audit Calculations.

Authority: [IC 6-2.5-2-1\(a\)](#); [IC 6-2.5-2-1\(b\)](#); [IC 6-2.5-9-3](#); [IC 6-8.1-5-1\(c\)](#); [IC 6-8.1-5-4\(a\)](#); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-5-1](#).

Taxpayer argues that the Department of Revenue's audit methodology and calculations were faulty and resulted in an over-assessment of sales and use tax.

STATEMENT OF FACTS

Taxpayer operates a combination gas station and convenience store. Along with gasoline, Taxpayer's convenience store sells coffee, tobacco products, snack foods, automobile supplies, health and beauty supplies, candy, newspapers, cell phone accessories, grocery items and the like.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's sales tax records and returns. The audit found that Taxpayer had approximately 7.5 million dollars in sales during the three-year audit period.

The audit concluded that Taxpayer failed to retain source documents and overstated the amount of its sales tax exempt sales. The audit recalculated the amount of exempt convenience store sales. The audit resulted in the assessment of additional sales tax. Taxpayer objected to the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

I. Gross Retail Tax – Audit Calculations.

DISCUSSION

The Department concluded that Taxpayer overstated the amount of its exempt convenience store sales. Taxpayer concludes that approximately 50 percent of its convenience store sales were exempt.

The audit found that Taxpayer failed to retain source sales tax documents for the years under audit. Taxpayer instead provided handwritten monthly summary statements. Taxpayer was able to provide cash register summaries for one month in 2013. According to the audit report, "Since the [T]axpayer was unable to produce the requested documentation, an Agreement Project Audit Results based upon the April 2013 cash register summary records was prepared." The audit report describes the process as follows:

The auditor reviewed the April 2013 month end cash register summary (Z-tape) which was the only sales documentation the [T]axpayer could provide. Using the information a worksheet was prepared by the auditor listing department description (i.e. chips, newspaper, coffee, etc.), department codes, department gross receipts and the taxability of each department . . . The various departments were totaled (less the fuel sales, money orders and money grams sales) to determine the month total sales. The total of the departments subject to sales tax was subtracted from the total sales to determine the amount of audited exempt sales. The sum of the audited exempt sales was then divided by the month total sales to determine the total audited exempt sales percentage. The auditor established the exempt sales to be 34 [percent] of total sales. This amount is higher than average because the [T]axpayer provides a service to their customers of cashing payroll checks and charges a fee. This fee is included in the exempt sales percentage. The [T]axpayer also accepts food stamps. Based on this review, the audit has concluded the [T]axpayer over reported their exempt sales. (Emphasis added).

Taxpayer reported that approximately 50 percent of its convenience stores sales were exempt but had no source documentation to verify that calculation. Based on the limited source documents Taxpayer did possess – for one month outside the audit period – the audit calculated the 34 percent of its convenience store sales were exempt.

The audit report states that, "The [T]axpayer agrees to use the information from the April 2013 cash register summary" but that "[T]axpayer disagrees with the overall audit findings."

Taxpayer argues that the handwritten summary statement sufficiently establishes that it correctly reported its exempt sales during 2010, 2011, and 2012.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in [IC 6-8.1-5-1\(c\)](#), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests

with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1](#)(a). A retail merchant – such as Taxpayer – is required to "collect the tax as agent for the state." [IC 6-2.5-2-1](#)(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes" [IC 6-2.5-9-3](#).

Taxpayer's representative maintains that Taxpayer's exempt sales during 2010 were 55 percent, during 2011 were 50 percent, and during 2012 were 45 percent. However, Taxpayer readily admits that it disposed of all the source documentation that would have verified those claimed percentages.

As a business conducting retail transactions and collecting sales tax on behalf of the state, Taxpayer was required to maintain accurate financial records. "Every person subject to a listed tax must keep books and records so that the Department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." [IC 6-8.1-5-4](#)(a). "If the Department reasonably believes that a person has not reported the proper amount of tax due, the Department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." [IC 6-8.1-5-1](#)(b). See also [45 IAC 15-5-1](#).

Based on the documentation available, it is not possible to agree that Taxpayer established that the audit assessment was "wrong" as required under [IC 6-8.1-5-1](#)(c). Using Taxpayer's own 2013 available source documents, the audit quite reasonably determined that Taxpayer's exempt convenience store sales were 34 percent. In the absence of source documentation, the audit quite reasonably "extrapolated" that exempt calculation to the years at issue.

Given the fact that Taxpayer failed to retain or preserve source documentation of its day-to-day transactions and that the audit employed Taxpayer's own 2013 documents to calculate the amount of the proposed assessment, it is not possible to conclude that Taxpayer has met its burden of demonstrating that the audit's conclusions were wrong as required under [IC 6-8.1-5-1](#)(c).

FINDING

Taxpayer's protest is respectfully denied.

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